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TAGS: KJUS PTER PREL PGOV GM
SUBJECT: AL-MASRI CASE -- CHANCELLERY AWARE OF USG CONCERNS

REF: A. BERLIN 230

B. BERLIN 200

Classified By: DCM John M. Koenig for Reasons 1.4 (b) and (d)

1. (S/NF) In a February 6 discussion with German Deputy National Security Adviser Rolf Nickel, the DCM reiterated our strong concerns about the possible issuance of international arrest warrants in the al-Masri case. The DCM noted that the reports in the German media of the discussion on the issue between the Secretary and FM Steinmeier in Washington were not accurate, in that the media reports suggest the USG was not troubled by developments in the al-Masri case. The DCM emphasized that this was not the case and that issuance of international arrest warrants would have a negative impact on our bilateral relationship. He reminded Nickel of the repercussions to U.S.-Italian bilateral relations in the wake of a similar move by Italian authorities last year.

2. (S/NF) The DCM pointed out that our intention was not to threaten Germany, but rather to urge that the German Government weigh carefully at every step of the way the implications for relations with the U.S. We of course recognized the independence of the German judiciary, but noted that a decision to issue international arrest warrants or extradition requests would require the concurrence of the German Federal Government, specifically the MFA and the Ministry of Justice (MOJ). The DCM said our initial indications had been that the German federal authorities would not allow the warrants to be issued, but that subsequent contacts led us to believe this was not the case.

3. (S/NF) Nickel also underscored the independence of the German judiciary, but confirmed that the MFA and MOJ would have a procedural role to play. He said the case was subject to political, as well as judicial, scrutiny. From a judicial standpoint, the facts are clear, and the Munich prosecutor has acted correctly. Politically speaking, said Nickel, Germany would have to examine the implications for relations with the U.S. At the same time, he noted our political differences about how the global war on terrorism should be waged, for example on the appropriateness of the Guantanamo facility and the alleged use of renditions.

4. (S/NF) Nickel also cited intense pressure from the Bundestag and the German media. The German federal Government must consider the "entire political context," said Nickel. He assured the DCM that the Chancellery

is well aware of the bilateral political implications of the case, but added that this case "will not be easy." The Chancellery would nonetheless try to be as constructive as possible.

5. (S/NF) The DCM pointed out that the USG would likewise have a difficult time in managing domestic political implications if international arrest warrants are issued. He reiterated our concerns and expressed the hope that the Chancellery would keep us informed of further developments in the case, so as to avoid surprises. Nikel undertook to do so, but reiterated that he could not, at this point "promise that everything will turn out well."

TIMKEN JR